THERE ARE NO GROUNDS FOR IMPOSING BAS RELOCATION REIMBURSEMENT LIABILITY ON ICO GLOBAL

Overview

- Imposing reimbursement liability on ICO Global would be legally tenuous and inequitable.

- In 2005, DBSD (then known as ICO North America) acquired all of ICO Global's North American satellite assets and business and was separately funded by third party investors. ICO Global was an investor in DBSD but no longer had any involvement with U.S. MSS operations.

- To impose liability here would stifle investment by creating a risk for future shareholders in Commission licensees that they could be held liable at some indeterminate future date for the licensee's obligations.

- A critical element of attracting investors is ensuring that they can remain separate from the legal liabilities of the entities in which they invest.

ICO Global History

- Prior to 2005, ICO Global lost billions in its effort to construct, launch and operate a global MEO satellite system – a system that bears no relationship to the DBSD GEO satellite. A dispute with ICO Global's satellite manufacturer taxed ICO Global's financial resources.

- Without adequate resources to continue in both the U.S. and globally, ICO Global identified investors to form a new, separate entity to pursue the GEO opportunity in the U.S. that had arisen as a result of recently adopted ATC rules. The investors provided the new entity, New ICO North America (now known as DBSD), with $650 million in financing.

- ICO Global transferred its U.S. license, employees and operations to DBSD, retaining a 56% fully diluted interest in DBSD.

- DBSD's investors and ICO Global insisted on arms' length separation between the two entities as a condition of funding DBSD.

- Post transfer, ICO Global no longer had any rights to or responsibility for the North America MSS business.

- ICO Global never provided or received funding between the companies – and ultimately ICO Global lost even its 56% interest in the DBSD bankruptcy. The maximum ICO Global will receive in the newly reorganized post-bankruptcy DBSD is 4%, and Sprint is attempting to reduce that to zero through the court of appeals process.

- Ignoring the separation of the businesses would effectively impose the licensee's obligations on an investor, chilling investment in regulated entities.

Corporate Structure; Investor Rights; Separate Operations

- ICO Global and DBSD are in two different businesses and have no involvement in each others' businesses.

- Since 2005, DBSD has been separately funded and has relied on its own resources to construct, launch and operate its GEO satellite without any assistance from ICO Global. ICO Global employees with MSS expertise became and remain DBSD employees.

- DBSD's investors and the ICO Global board insisted on arms' length separation between DBSD and ICO Global as a condition of funding DBSD.

- The related costs of the MSS operation, including the costs of relocating BAS licensees, were and are a liability of DBSD, and were disclosed to DBSD's outside investors in the documentation associated with their investment in 2005.

Clearwire Analogy

- Sprint's claim that ICO Global has engaged in "misdirection" and its CEO's statement that ICO Global is playing "corporate shell games" are particularly ironic – and galling – given that Sprint itself has structured its relationship with Clearwire in essentially the same manner as ICO Global and DBSD.

- Just as ICO Global transferred assets and employees to a separately funded DBSD to pursue the MSS business, Sprint contributed spectrum, employees, equipment, equipment leases, and contracts into a joint venture – New Clearwire – that likewise obtained significant third party funding to build and operate a 4G network.

- Sprint retains a 56% ownership interest in the new venture and appoints a majority of the board of directors, but it states that it does not control the venture. At the same time, Sprint and Sprint's CEO routinely refer to New Clearwire's 4G Network as "our," *i.e.*, Sprint's, network. Clearwire and Sprint even have common directors, with Sprint officers and directors serving on the Clearwire board. Yet Sprint refuses to take any responsibility for Clearwire's obligations, as evidenced by the fact that Sprint doesn't even consolidate Clearwire financial statements in its public reporting. No one is arguing that Sprint is responsible for Clearwire's obligations or that Sprint's treatment of its Clearwire investment constitutes a "corporate shell game."

Extending Liability to ICO Global Would Be Unlawful

- There may be limited, fact specific circumstances in which it is appropriate for the Commission to extend a licensee's obligations to affiliates of the licensee, but this is not one of them.

- DBSD (established in 2005 as ICO North America) is not a "façade" or sham. It has its own assets, liabilities and business operations.

- ICO Global likewise has assets, liabilities and business operations that are separate from DBSD's.

- DBSD was not created to avoid FCC obligations or policies.

- ICO Global and DBSD are not a "common enterprise" or a joint "MSS entrant."

- Extending an MSS licensee's liability for relocation reimbursement costs to a shareholder of or investor in the licensee would be impermissible retroactive rulemaking. Sprint itself acknowledged that the liability was solely the responsibility of the licensee when it brought an action in Federal District Court to "enforce" the Commission's reimbursement rules, telling the court that those rules imposed liability on "MSS licensees" and suing DBSD and not ICO Global.

Extending Liability to ICO Global Would Be Inequitable

- Not only would it be legally impermissible to impose liability for relocation costs on ICO Global, it would be grossly unfair.

- Sprint received an extraordinary grant of 10 MHz of prime spectrum. In exchange, it spent significant sums to clear the MSS spectrum knowing that it might not be able to recover a portion of those sums from a bankrupt licensee.

- That does not, however, provide any legal or equitable basis for imposing relocation reimbursement liability on ICO Global.

- ICO Global (even prior to the formation of DBSD in 2005) never utilized the BAS spectrum or received any benefit from Sprint's delayed and inexplicably expensive band clearing activities, and it never will now that it has lost all but a minimal interest in DBSD following DBSD's exit from bankruptcy.